

State seeks high court review of Yakama gas tax case

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The state Supreme Court is being asked to hear the case of a state agency seeking \$20 million in alleged back taxes and penalties from a fuel distribution company owned by a Yakama Nation businessman.

The Department of Licensing on Monday filed for a direct review of the August decision by a Yakima County Superior Court judge that the Yakama Nation's treaty prevents the state from enforcing its gasoline tax and licensing requirements on Cougar Den Inc.

Judge Michael McCarthy ruled a clause in the treaty protecting the right to free travel also implicitly protects tribal members' rights to free trade, because historic records suggest that's how Yakama leaders understood the treaty when it was negotiated in 1855.

The state had argued the state's tax on gas imports does not interfere with tribal members' rights to travel.

Cougar Den is licensed by the Yakama Nation and acts as a wholesaler, importing tax-free gas from Oregon and selling it to other tribal member-owned businesses, including gas stations that then sell the discounted gas to the public.

Cases are eligible to seek a direct review from the state Supreme Court — rather than first taking the case to appeals court — in matters concerning taxes, treaty rights, or other issues of similar public importance, said Brad Benfield, a spokesman for the Department of Licensing, in an email.

He said the agency plans to file a statement outlining its grounds for direct review later this week.

It's a somewhat unusual move to skip the Court of Appeals, but not surprising given the significance of the case, said Cougar Den's attorney, Andre Penalver in an email.

If the Supreme Court declines to review the case, it will be heard by a state Court of Appeals.